

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MATTHEW S. PENA, a.k.a.
AMANDA JO HANOWELL,

Plaintiff,

vs.

ELDON VAIL, BRUCE GAGE,
STEVEN SINCLAIR and KYLE
KING,

Defendants.

NO. CV-10-5111-RMP

ORDER DENYING MOTIONS FOR
INJUNCTIVE RELIEF AND FOR
APPOINTMENT OF COUNSEL

BEFORE THE COURT are Plaintiff's Motions for a Temporary Restraining Order/Preliminary Injunction (Ct. Rec. 4) and for Appointment of Counsel (Ct. Rec. 5). Plaintiff is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Plaintiff did not note these motions for calendar as required by Local Rule for the Eastern District of Washington 7.1(h). **PLAINTIFF IS CAUTIONED THAT ANY FURTHER MOTIONS SUBMITTED TO THE COURT WITHOUT NOTING THEM FOR HEARING IN COMPLIANCE WITH THE LOCAL RULES WILL NOT BE ADDRESSED BY THE COURT.** The court has heard Plaintiff's Motions on the date signed below.

Prior to October 8, 2010, Plaintiff notified the court telephonically of Plaintiff's release from incarceration and present residence in Vancouver, Washington. Plaintiff still has not provided *written* notification of this change of address as directed. Plaintiff

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1 is advised this release from incarceration renders moot any request for injunctive relief in
2 the complaint or the separate Motion against Defendants at the Washington State
3 Penitentiary. *See Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1990); *Dilley v. Gunn*,
4 64 F.3d 1365, 1368 (9th Cir. 1995)(stating that an inmate's transfer from an institution
5 while his claims are pending will generally moot any claims for injunctive relief relating
6 to the prison's policies). Therefore, **IT IS ORDERED** Plaintiff's Motion (Ct. Rec. 4) is
7 **DENIED**.

8 Plaintiff also requests the appointment of counsel. This court has discretion to
9 designate counsel pursuant to 28 U.S.C. §1915(e)(1) only under exceptional
10 circumstances. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining
11 whether exceptional circumstances exist requires evaluating "the likelihood of success
12 on the merits and plaintiff's ability to articulate his claims *pro se* in light of the
13 complexity of the legal issues involved." *Id.* (citation omitted).

14 Plaintiff asserts an inability to afford counsel and incarceration status that limits
15 the ability to litigate. As stated above, this second assertion is moot. Plaintiff also
16 claims a limited knowledge of the law, legal research and court proceedings. By
17 separate Order, the court has provided Plaintiff with relevant legal standards and directed
18 Plaintiff how to present a legally sufficient complaint. Accordingly, the record does not
19 reflect exceptional circumstances which warrant the appointment of counsel to assist
20 Plaintiff at this time. **IT IS ORDERED** Plaintiff's Motion for Appointment of Counsel
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1 (Ct. Rec. 5) is **DENIED**.

2 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
3 Order and forward a copy to Plaintiff at Plaintiff's last known address.

4 **DATED** this 10th day of November, 2010.

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6
7 s/ Rosanna Malouf Peterson

8 ROSANNA MALOUF PETERSON
9 UNITED STATES DISTRICT JUDGE
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